

October 11, 2015

VIA Email (CEQA.Guidelines@resources.ca.gov)

Christopher Calfee, Senior Counsel
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Re: Comments from The Nature Conservancy on the Proposed Updates to the California Environmental Quality Act Guidelines

Dear Mr. Calfee:

The Nature Conservancy (TNC) appreciates the opportunity to comment on the proposed updates to the Guidelines Implementing the California Environmental Quality Act (CEQA). Our comments below cover the following improvements: (1) incorporation of climate change into future baselines and discussion of significant environmental impacts, (2) analysis of climate-related water supply impacts, (3) groundwater supply analysis, (4) analysis of energy impacts, (5) using regulatory standards in CEQA, (6) the environmental checklist, (7) accounting for greenhouse gas emissions from the landscape, (8) addressing cumulative impacts, (8) mitigation, and (9) habitat connectivity.

Incorporate Climate Change in Baselines

We support the proposed amendment that would allow for use of future baseline conditions when “supported by reliable projections based on substantial evidence in the record” and urge this allow for reliable climate change projections.

Climate science is well-established now to leave little doubt as to the impacts we are already experiencing and that will only worsen in time (as discussed in the water supply amendment section starting on page 81). Like population growth in Los Angeles in the *Neighbors* case, climate change is not hypothetical; it is inevitable.

The Council on Environmental Quality (CEQ) offers the following examples of how climate change can affect the environment of a proposed action:

[C]limate change can affect the environment of a proposed action in a variety of ways. For instance, climate change can affect the integrity of a development or structure by exposing it to a greater risk of floods, storm surges, or higher temperatures. Climate change can increase the vulnerability of a resource, ecosystem, or human community, causing a proposed action to result in consequences that are more damaging than prior experience with environmental impacts analysis might indicate. For example, an industrial process may draw cumulatively significant amounts of water from a stream that is dwindling because of decreased snow pack in the mountains or add significant heat to a water body that is exposed to increasing atmospheric temperatures. Finally, climate change can magnify the damaging strength of certain effects of a proposed action.¹

Given these potential impacts, it is important to consider the changing climate when establishing a baseline for a proposed project. The Guidelines should clarify that when impacts from climate change are supported by substantial evidence, a future baseline that incorporates these impacts should be used. If, for example, a project is in an area that is subject to inundation in the future, and the project will require protection from inundation where none would otherwise be required. This is notably true even if the impacts/adaptation that will ultimately be required is outside of the approving agency's jurisdiction.

Incorporate Climate Change in § 15126 Consideration and Discussion of Significant Environmental Impacts

Using the same reasoning, climate change should be considered in the discussion of significant environmental impacts. When substantial evidence indicates climate change will compound or lengthen a project's impacts on the environment, further assessment of mitigation and alternatives should be required.

The U.S. Forest Service has issued initial guidance on considering climate change in project-level NEPA analysis. It emphasizes the importance of incorporating climate adaptation considerations into pre-NEPA analysis "to develop purpose and need statements and proposed actions designed to address climate change effects on the local environment."² The Forest Service guidance specifically mentions that, when developing alternatives, it may be appropriate to include alternatives that "enhance adaptive capacity."³

¹ <http://www.whitehouse.gov/sites/default/files/microsites/ceq/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf> at 6-7.

² USDA FOREST SERV., CLIMATE CHANGE CONSIDERATIONS IN PROJECT LEVEL NEPA ANALYSIS (2009), at 2.

³ *Id.* at 4.

The CEQ NEPA Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts⁴ can provide a model for California in integrating climate change adaptation into its CEQA analysis. The CEQ Guidance instructs that agencies should identify which climate change effects warrant consideration, how climate change may in turn change the impact, sustainability, vulnerability, and design of the proposed action (and alternatives).⁵ CEQ also directs that climate change impacts should be incorporated into the reasonably foreseeable future condition of the affected environment for the “no action” alternative and used as a basis for evaluating alternatives.

Guideline § 15126.2(a) states that an assessment of impacts is normally limited to “changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced”.⁶

The guidelines should be clarified to allow for use of future climate change projections that are “supported by reliable projections based on substantial evidence in the record”, mirroring the standard used for future baselines. These changes could involve specific changes to significance thresholds (for example, to the flooding standard commonly used in EIRs) or broader changes that address adaptation more generally. Specifically, § 15126.2(a) should address climate change and the effects on fire, flood, sea level rise on a project baseline and add habitat corridors that plan for a changing climate.

Strengthen Connection to Habitat Connectivity

Science is demonstrating the importance of maintaining and enhancing habitat connectivity especially in the face of climate change. The California Essential Habitat Connectivity Project notes the importance of habitat connectivity “because a functional network of connected wildlands is essential to the continued support of California’s diverse natural communities in the face of human development and climate change.” While the draft Guidelines revision did not address this issue, we feel it is important to once again stress the need for the Guidelines to strengthen the tie to habitat connectivity and provide more clarity on the subject in terms of protecting and enhancing existing functional connectivity and stronger clarity on the need to mitigate for impacts to corridors. It is particularly important to address this issue particularly as it relates to cumulative impacts analyses and requiring that project proponents take into account existing conditions, impacts of their projects as well as other projects in the vicinity with respect

⁴ <http://www.whitehouse.gov/sites/default/files/microsites/ceq/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf>

⁵ NEPA Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts, 75 Fed. Reg. 826 (Feb. 23, 2010), at 2, 6.

⁶ § 15126.2(a)

to connectivity. Additionally, the Guidelines should require analysis and planning for the effects climate change will have on habitat corridors and species migration.

A framework for incentives to encourage infill development and smart growth, while imposing a more rigorous process for analysis and mitigation of greenfield development and sprawl, should also be developed.

These integrated planning frameworks, provide an important foundational baseline to protect important conservation lands and run along with local General Plans to guide land use decisions.

Addressing Cumulative Impacts

The Guidelines should ensure a standards-based approach does not prevent cumulative impacts from being addressed in a comprehensive manner. Since the earliest cases interpreting CEQA and the National Environmental Policy Act (NEPA), it has been clear under each statute that the analysis of cumulative environmental effects cannot be satisfied by compliance with individual categorical regulatory program standards.⁷ Simply using categorical regulatory standards as a benchmark for satisfying CEQA is insufficient if other factors are in play that make minimal compliance with the standard inadequate to avert adverse effects.

Water Supply Analysis Should Account for Climate Change

We are also pleased to see the proposed guidance on water supply impacts and urge climate change and other climate impacts are explicitly referenced in § 15155(f)(3). As discussed in the background discussion on page 81, there are a number of impacts climate change is expected to have on water supply, yet the language of the amendment makes no reference to many of the climate change impacts identified by the Department of Water Resources (and listed on page 81).

CEQA already requires water forecasting to ensure a project has a reliable water supply. Failure to account for climate change in this forecasting would undermine the analysis and compromise informed decision-making. Adaptation and management of risk should be considered in water planning for water supply and environmental benefits.

Section 15155(f)(3) should be modified to read:

(3) An analysis of circumstances affecting the likelihood of the water's availability, as well as the degree of uncertainty involved. Relevant factors may include but are not limited to, climate change, rising temperatures, water demand, reduced snowpack, sea level rise, increased

⁷ CEQA Reform: Issues and Options, Barbour and Teitz, April 6, 2005.

wildfires, floods, drought, saltwater intrusion, regulatory or contractual curtailments, and other reasonably foreseeable demands on the water supply.

Groundwater Supply Analysis (p. 81 et seq)

In the Vineyard case (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 434, cited in the Proposed Updates (p 82-84), the California Supreme Court held (among other important CEQA interpretations) that the challenged EIR had failed to properly consider the environmental impacts of groundwater pumping proposed to supply the project on flow in the Cosumnes River and on special status species (salmon) dependent on flow in the river. While the Vineyard case turned on approval of a major housing development's water supply analysis, the CEQA interpretation announced by the court is not limited to public water systems or to situations involving a city or county as a lead agency or to water supply analyses.

Accordingly, the currently proposed revisions to Section 15155, tacking on some of the Vineyard holdings to the existing development-oriented provision (primarily focusing on water supply analyses) are too narrow, and should be supplemented by a new provision dealing specifically with the analysis of the environmental impacts of proposed groundwater pumping by any type of project on ecological and human water needs. As the Proposed Update notes:

Additionally, the focus of this subdivision should be on the environmental impacts associated with a particular water supply. (Vineyard, supra, 40 Cal. 4th at 434 (the “ultimate question under CEQA ... is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project”) (emphasis in original).) For example, after establishing the amount of water a project will need, the analysis might examine whether supplying that amount from groundwater might lead to subsidence or unsafe yield, or whether diverting that amount from surface flow might adversely affect fish and wildlife. (p. 83)

California's 2014 Sustainable Groundwater Management Act and drought conditions (which have led to increasing groundwater withdrawals from already stressed basins) demonstrates the compelling need to consider the environmental effects of groundwater pumping on groundwater aquifers and their linkage to surface water flows and ecological resources dependent on those flows⁸. This inquiry demonstrably merits a separate section in the Guidelines, and in the

⁸ The Vineyard court specifically focused on the effects of groundwater withdrawals on surface flows in the Cosumnes River that were necessary for survival of a listed species—migrating salmon. The court did not consider whether effects on other species or habitats warranted a similar analysis (and mitigation for significant effects), nor whether the public trust doctrine required inherent limitations on groundwater withdrawals. We believe that CEQA should require an analysis of possible significant adverse effects on—and mitigation for-- the broadest spectrum of environmental resources.

questionnaire, that would mandate, as part of any CEQA analysis of a project proposing groundwater withdrawal, a comprehensive, science based inquiry into, and consideration of, the long term effects of proposed pumping on groundwater aquifers, as well as on ecological resources that depend on flow linked to groundwater, with specified monitoring and mitigation conditions where those effects are likely. This inquiry is especially important because the adverse effects of groundwater pumping on surface flows and dependent resources are often difficult to document and delayed. But, once noticed, effects are most often irreversible, placing a premium on precautionary action.

Analysis of Energy Impacts

The state is in the process of significantly transforming energy sources and uses. The Draft text recognizes the importance of this transformation in energy use, driven in large part by climate change:

“While California is a leader in energy conservation, the importance of addressing energy impacts has not diminished since 1974. On the contrary, given the need to take action to avoid the effects of climate change, energy use is an issue that we cannot afford to ignore.”
(p.76)

The correlative of energy **use** is energy **production**: the environmental impacts of where energy comes from matter just as much as energy use. In fact, unlike those of many other projects, the environmental impacts from energy production can be unique and significant because the locations where energy development occurs tend to be remote and to harbor ecologically important species and natural communities. The Guidelines should include a more considered, specific focus on the environmental consequences of choices made in the sources of energy—in this section or in a separate section. For example, as the state increasingly moves to more stringent renewable portfolio standards for the generation of electricity, the environmental consequences of generation and transmission choices—in siting, water use, transmission routing, and alternatives (such as distributed generation versus utility scale facilities—need more careful and uniform consideration across counties and local jurisdictions.

Furthermore, the nature of the energy siting decision process requires a re-examination in the Guidelines of when a “project” emerges and CEQA review is necessitated. In many instances, the selection of a site for renewables generation or for transmission endpoints (defining routes) is made, preceded by very substantial financial commitments and investment backed expectations, before a CEQA analysis attaches, effectively precluding a full and fair CEQA analysis of the project. As a result, project proponents have little flexibility to address potential significant impacts that are identified in the CEQA analysis; meanwhile, those wishing to see proposed

projects amended to avoid or reduce significant impacts resort to opposing project that they might have supported had there been a possibility to influence siting earlier.

Section 15126.2 of the Guidelines and Appendix F (which now deals with energy efficiency and usage issues) should be amended (or a new Appendix added) to incorporate specific, mandatory consideration of these issues in CEQA analyses⁹:

b) *Energy Project and Use Impacts*. The EIR shall include an analysis of whether the project will result in significant environmental effects due to *siting in high ecological conflict areas, or* wasteful, inefficient, or unnecessary *production or* consumption of energy. This analysis should include the project's energy *production and use impacts* for all project phases and components, including *transmission impacts and* transportation related energy, during construction and operation. In addition to project design, other relevant considerations may include, among others, the project's size, location, orientation, *technology*, or equipment use and any *features, including improved renewable energy, conservation or efficiency features* that could be incorporated into the project. *Partial* guidance on information that may be included in such an analysis is presented in Appendix F. This analysis is subject to the rule of reason and shall focus on *environmental effects of the project or* energy demand that is caused *or served* by the project.

Using Regulatory Standards in CEQA (page 12, et. seq.)

This section would specifically authorize lead agencies to use existing regulatory and statutory standards to serve as initial “thresholds of significance,” to determine when adverse impacts are “normally” significant and thus require that an EIR be prepared, requiring full mitigation. While the draft arguably extends existing practice and would require agencies to justify their use of thresholds, and to look beyond whether the project meets, for example, air and water quality standards to determine whether cumulative impacts would be harmful, the proposed change may well not be benign. The change would strongly encourage the unfortunate agency practice of looking only to media specific regulatory standards as the measure of project impact significance. The change may have the effect of reducing the inquiry into impact significance, once compliance with a standard is demonstrated. It may encourage some efficiency and uniformity in CEQA reviews but at the price of a “hard look” at impacts, especially the cumulative effects of projects.

We recommend that the Guidelines acknowledge the use of regulatory thresholds, but make clearer that compliance with a regulatory provision does not end the analytic inquiry.

⁹ The lack of uniformity in the analysis of consequences of energy source choices is particularly important in renewable energy decisions in the California deserts, where avoidance and compensatory mitigation principles have not been evenly applied, resulting in the unnecessary and unjustifiable potential loss of valuable habitat and critical linkages. Additionally, the analysis of alternative sites and technologies has often been weak.

Accordingly, we suggest, in Section b(2), page 15, rewording the bold text following the first sentence to read:

When considering the adoption or the application of a threshold, the lead agency shall analyze how compliance with the proposed threshold may lessen the significance of project impacts, including cumulative impacts. A lead agency shall not adopt or apply a threshold in any way that limits or forecloses the consideration of relevant evidence of impacts, including whether significant project or cumulative impacts may remain despite compliance with the threshold.

Update the Environmental Checklist to Account for Groundwater and Biological Resources (Appendix G-- p. 38 et seq.)

The checklist is an important feature of CEQA administration, since it is frequently serves lead agencies as a presumptive limit on the scope of analysis. As in the case of the use of regulatory standards, great care should be taken to not encourage unduly limiting the initial scope of inquiry in CEQA analyses.

Reflecting our comments above on groundwater supply, we offer limited comments here on the groundwater and biological resources questions in Appendix G.

We believe that Section IX, should be retitled “HYDROLOGY, GROUNDWATER, WATER QUALITY/ QUANTITY Subsection (b) should be amended to read:

Would the project:

b) Propose groundwater withdrawals that would exceed the sustainable yield of a groundwater basin, substantially decrease groundwater levels, aquifer volumes, or affect surface or near surface flows or water dependent resources over the long term.

In Section IV, BIOLOGICAL RESOURCES, Subsection a) should be amended to read:

a) Have, either directly or through habitat modification, any adverse effect on a federal or state listed species, or a substantial adverse effect, on any species identified as a candidate, sensitive, or special status species in local, regional, or federal plans, policies or regulation, or by the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, Bureau of Land Management, or US Forest Service?

b) Have a substantial adverse effect on any riparian, aquatic, or other sensitive natural community or ecological process, identified in local, state or federal plans, policies, or

regulations or by the California Department of Fish and Wildlife, the US Fish and Wildlife Service, the Bureau of Land Management, or US Forest Service.

c) Have a substantial adverse effect on state or federal designated waters or wetlands (including, but not limited to, springs, seeps, marshes, vernal pools, coastal wetlands) through any means, including, but not limited to removal, filling, hydrological alteration, or groundwater pumping.

Integrate Landscape-Scale Regional Planning and Mitigation

A significant issue with the operation of CEQA that affects efficiency is lack of integration with regional planning. The Guidelines should encourage collaboratively designed plans that integrate regional and local land use, environmental, and infrastructure objectives. Leveraging existing conservation plans that contain conservation data and priorities could be an efficient and effective way to incorporate local knowledge and values that could reduce risk to the project and protect important conservation priorities. The Guidelines should encourage better long range integrated planning to identify potential environmental conflicts early, and to better value conservation lands and reduce climate change risks through tools and plans such as regional “greenprints” that better define areas needed to protect floodplains and important habitat areas, including wildlife corridors. The CEQA guidelines should be modified to recognize the beneficial need for integration with regional (and local) planning processes, along with other regulatory program incentives and funding options to accomplish this important goal.

Accounting for Greenhouse Gas Emissions from the Landscape

Governor Brown includes natural and working lands as one of the five ‘pillars’ for meeting the state’s greenhouse gas (GHG) reduction goals, stating in inaugural address that we should “manage farm and rangelands, forests and wetlands so they can store carbon”.

These lands provide multiple environmental and public benefits, including significant climate benefits, by absorbing carbon dioxide from the atmosphere and storing it indefinitely in their biomass. However, when forests and other natural lands are disturbed through events like deforestation and conversion to other uses, much of this stored carbon is released back to the atmosphere, contributing to global warming and other environmental impacts (e.g., water quality, biodiversity, wildlife habitat etc.). Furthermore, there is often the additional climate detriment of losing the ongoing sequestration benefits and climate regulation that the forest area once provided, as forestland conversion to other uses is often permanent.

TNC recommends that § 15064.4 of the Guidelines be amended to explicitly include language that prompts lead agencies to assess the impacts and significance of GHG emissions and foregone sequestration associated with conversion of forests and natural lands to other uses. The

absence of such explicit language could result in lead agencies not giving consideration to these impacts since they have been overlooked historically and many agencies may only think to consider fossil-fuel based GHG emissions, not biological.

Section 15064.4 (b) (1) should be modified as follows:

(b)(1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting, taking into account greenhouse gas emissions from the loss of carbon stocks and loss of future sequestration capacity.

GHG accounting methodologies exist at both the state and federal levels, and simple look-up tables could be developed, to enable the estimation of biological GHG emissions and lost sequestration associated with the conversion of forestland, as well as other natural lands. To this end, TNC also recommends that the language in this section require the calculation or estimation of GHG emissions over a qualitative analysis, as the State's overall objective is to reduce in absolute terms the amount of GHG emissions in the atmosphere. In the case of land conversion, there is significant risk that the absence of estimates or actual calculations of GHG impacts would lead to inaccurate and inconsistent assessments and as a result, the inability to effectively mitigate or minimize GHG impacts.

We appreciate your consideration of TNC's comments on the revisions to the CEQA Guidelines and would be happy to provide additional clarification and feedback.

Contact: Alexandra Leumer, aleumer@tnc.org